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SUBJECT: HUNGARY, HATE SPEECH, AND RACISM

TIMELY EC RACISM AND INTOLERANCE REPORT

¶1. Coincidental, but timely, one day following the shooting death of a 27-year-old Romani man and his five year-old son in the village of Tatarszentgyorgy, the European Commission Against Racism and Intolerance (ECRI) released their February 24 report that examined Hungarian racism and intolerance from June 2004 to 2008. Although acknowledging progress made by the Hungarian Government since the 2004 report - highlighting the 2003 Act on Discrimination and the establishment of the Equal Treatment Authority in 2005 - the report found important shortcomings, which continue to give rise to concern. In particular, the ECRI stated that the very high level of constitutional protection afforded to freedom of expression makes it difficult, if not impossible, for authorities to initiate effective legal action against those who use hate speech.

INEFFECTIVE LEGISLATION

¶2. Under current Hungarian law, incitement against groups is not criminalized, and only the most extreme forms of hate speech, i.e. incitement liable to provoke immediate violent acts, are outlawed by the Hungarian Criminal Code. Under the Hungarian Civil Code, a person specifically targeted by hate speech may file a civil suit, but as long as the speech remains abstract, not mentioning any specific individual, there is no legal recourse. Following the political system change in 1989, there were various unsuccessful attempts to broaden the prohibition on the use of hate speech. Most recently, in October 2007, Parliament amended the Civil Code, extending legal remedies to individuals or associations belonging to a group of people generally targeted by broadly defined insults based on national, ethnic or racial identity.

Early in 2008, despite opposition from all three opposition parties, the Socialists' coalition partner Free Democrats (SzDSz), the President of the Republic, and civil rights groups, Parliament passed the governing Socialists party's initiative and amended the Criminal Code, which allowed prosecutors to initiate investigation on broader grounds, including non-verbal abuse, such as the use of Nazi salutes. However, in June 2008, after President Solyom asked for a constitutional review, the Constitutional Court ruled both legislative acts to be unconstitutional, citing previous rulings on the same subject in 1992, 1999, and 2004. The Constitutional Court argued that the amendments infringed upon the acceptable freedom of expression guarantees protected by the Constitution.

HOT TOPIC, MUCH TALK, LITTLE ACTION

¶3. While the death of a Romanian handball player, allegedly

at the hands of Roma individuals in Veszprem on February 18, significantly reinforced general public hostility towards the Roma minority, the two killings in Tatarszentgyorgy, at least temporarily, re-focused the public discourse from "gypsy crime" to the lack of public security in general. Even the radical right-wing journalist, Zsolt Bayer, well-known for his harsh, anti-Roma rhetoric, condemned the perpetrators of the Tatarszentgyorgy murders in the same way he condemned those Roma who are charged with the murder in Veszprem. In a speech in Parliament on February 24, FIDESZ's Roma MP Florian Farkas warned that "the society has reached the edge of a collision." Minority Affairs Ombudsman Erno Kallai followed with his own address to Parliament, calling on the MPs to promptly work out both an "ethnic peace plan" and a concrete immediate action plan instead of making politically motivated but ineffective statements. President Solyom, following meetings with the Minister of Justice and Law Enforcement, the National Police Chief, and the Prosecutor General, expressed his shock and anger over the Tatarszentgyorgy killings.

IMPETUS FOR CHANGE?

¶4. While the ECRI report highlighted the lack of strong hate speech legislation, the reluctance of the authorities to identify racism as a motivation for attacks also results from shortcomings in the current criminal law. Although the Criminal Code specifically identifies hate-motivated offenses such as genocide, apartheid, violence against a member of a national, ethnic, racial or religious group, incitement against a community and use of symbols of despotism, the law expressly grants judges discretion to take aggravating circumstances, such as "base motivations" in cases of murder or grievous bodily harm, into account when sentencing offenders. However, due to the difficulty in proving racist motivations under the present provisions, courts often treat the offense as arising from a general disagreement, even in cases with strong evidence of racist violence.

¶5. In their report the ECRI recommends that Hungary make specific provisions in the criminal law to include racist motivations as aggravating circumstances when considering offenses. Prime Minister Gyurcsany announced on February 25 that the government's proposal to amend the Constitution has been finalized; stressing that discussion and the action is needed rather than waiting for more killings to happen. Commenting that "freedom of speech is a value of which Hungary can be proud of...everybody has to understand that it is not possible to incite violence against ethnic groups without consequences." He noted that the modifications to the current legislation are not to limit the freedom of expression, rather to better balance the rights and obligations of freedom of speech and human dignity. Such changes would require Parliament to amend the Constitution, but this requires a two-thirds majority, which will be difficult, if not unlikely, in the current political climate.
Foley